

HUMAN SERVICES BOARD

INTRODUCTION

A fair hearing was held on February 7, 2008. The record was held open until February 20, 2008 for additional information and written argument. The decision is based upon the testimony, documentary evidence, and legal briefing.

1. The petitioner is a single parent of a five year old daughter. Petitioner is a forty-five-year-old man with a GED and no driver's license. Petitioner receives a two person RUFA grant in the amount of \$580 per month. Petitioner's daughter started kindergarten this school year and attends a morning program from 8:00 a.m. to 11:15 a.m. Petitioner is taking medication for depression and anxiety.

2. Petitioner has received RUFA off and on for a period of approximately twenty-four months since July 2001. As part of his receipt of benefits, petitioner needs to comply with RUFA requirements to develop a Family Develop Plan (FDP) and become ready to enter the workforce unless petitioner qualifies for a deferment.¹

3. During July 2007, petitioner was assigned to S.F.'s caseload. S.F. is a RUFA case manager. S.F.'s duties include assessing a recipient's abilities and employability, identifying barriers to work, and identifying services, supports, and activities that will help the recipient reach his/her employment goals. S.F. reviewed part of petitioner's file before working with him. S.F. initially identified childcare and transportation as barriers to petitioner's participation in his FDP. S.F. was aware that petitioner was anxious and uncomfortable in groups. S.F. was not aware that petitioner was taking medications or that he had received past medical deferments.

4. Petitioner and his daughter were living in a campground when he first started to work with S.F. The campground was scheduled to close for the season on September

¹ Petitioner did have a deferment during 2005 due to depression, anxiety, panic attacks with agoraphobia, and opiate addiction.

30, 2007. As will be more fully set out below, obtaining suitable and permanent housing has been a challenge for petitioner.

5. Petitioner and S.F. signed a FDP on or about August 24, 2007. Petitioner agreed to two main tasks; (1) finding childcare by September 3, 2007 and (2) attending Making It Work (MIW) for twenty-four hours per week Monday through Thursday from September 4 to 29, 2007. MIW operates from 9:00 a.m. to 3:00 p.m. MIW is operated by Vermont Adult Learning (VAL); each session consists of four weeks. MIW helps recipients with job readiness and job search skills.

6. The first FDP was quickly amended by petitioner and S.F. because they recognized the need for petitioner to find housing. The second FDP was signed on August 31, 2007. The salient features included:

- a. Housing Search starting August 31, 2007 with a target date of September 30, 2007. Petitioner agreed to contact his Department eligibility worker about financial help, contact housing resources, do an intensive housing search 20 hours per week, and document his housing search.
- b. MIW was pushed back to start October 1, 2007. Petitioner agreed to attend classes, contact S.F. and MIW coordinator if he was unable to attend, submit weekly attendance records, make up absences, and complete a transition plan. In addition, petitioner agreed that he would provide written documentation of good cause for absences and that he understood if he missed classes without good

cause he faced a second conciliation and potential sanction.

- c. Arranging child care by the end of September. Petitioner agreed to activities to help transition his daughter to kindergarten and to find child care if his friend TL did not work out as a childcare provider.
- d. CRASH/ADAP license re: assistance. Petitioner agreed to a target date of October 30, 2007 in which to complete the paperwork with CDAS to try and reinstate his license.
- e. Monthly meetings with S.F.
- f. Transportation services could be arranged through Ready2Go (a transportation service through Good News Garage), if needed.

7. Petitioner and S.F. met on or about September 27, 2007. Petitioner reported that he had found housing, a trailer, but that he needed time in which to clean the trailer. Petitioner and S.F. agreed to push back MIW for one month with a start date on October 29, 2007. The parties subsequently entered into a new FDP dated October 15, 2007. That FDP scheduled a meeting between petitioner and S.F. for November 21, 2007 at 9:00 a.m. The time for that meeting was later changed in writing to 11:30 a.m. but there is no notation when the change was made.

8. During October 2007, petitioner was unable to use the shower in the trailer and found other problems. The health authorities were called by petitioner's mother and the

trailer was condemned primarily due to lack of potable water (e-coli in the water) and electrical problems. Petitioner had to move from the trailer at the end of October 2007.

9. Petitioner did not start MIW on October 29, 2007. S.F. learned that petitioner cancelled his ride to MIW through Ready2Go on October 29 and 30, 2007. S.F. and petitioner spoke on October 30, 2007, and petitioner told S.F. he did not have after school care for his daughter until November 5, 2007. Petitioner cancelled his ride on October 31, 2007. S.F. sent petitioner a conciliation letter that day.

10. Petitioner and S.F. met on November 5, 2007 for a conciliation meeting. They signed a conciliation agreement that incorporated the following terms:

- a. Attend VAL open center intake on November 6.
- b. Set up schedule of open center Monday through Wednesday 8:30 a.m. to 11:30 a.m. and Thursday Job Club 1:30 p.m. to 3:00 p.m. for the period of November 6 to 21, 2007.
- c. Attend MIW starting November 26, 2007 through December 21, 2007. Petitioner was to make arrangements for childcare and arrangements for transportation by his friend or through Ready2Go.
- d. Continue looking for affordable housing.

At the open center, petitioner was to work on his reading and writing. Petitioner had requested a program

where he was not part of a group meeting due to anxiety in group settings. S.F. knew that petitioner had some issues with anxiety and tried to accommodate him by using the VAL open center.

These changes were incorporated into a FDP dated November 5, 2007.

11. During November, petitioner and his daughter were homeless. Petitioner received General Assistance temporary housing assistance through the Department who paid a local hotel to house petitioner and his daughter. To qualify for ongoing temporary housing assistance, applicants need to apply every week. The Department records show that petitioner applied for temporary housing assistance on November 8, 9, 13, 20, and 21, 2007. In addition, petitioner was actively looking for housing during this period.

Petitioner does not agree with the November 20 date and testified that he applied for continuing housing assistance on the morning of November 19. The records from VAL show that petitioner was at VAL on November 20, 2007 but not November 19, 2007. In addition, the assistance from the November 13 application covered the time period through November 18. To continue receipt of temporary housing

assistance for the period starting November 19 (Monday), petitioner needed to apply that day.

12. Petitioner testified that he was not given a set appointment for his temporary housing applications. He was seen when an eligibility worker had an opening. Petitioner waited varying amount of times including one time where he waited for six hours on the dates he applied for temporary housing assistance.

13. Petitioner did not attend the VAL open center on November 19 or November 21, 2007. On November 19, petitioner was at the Department in the morning applying for temporary housing assistance and at Franklin District Court in the afternoon.

On November 21, 2007, petitioner was at the Department applying for temporary housing assistance. Petitioner did not notify S.F. or VAL that he was unable to attend the open center. Petitioner did not notify S.F. that he needed to reschedule their November 21 meeting. Petitioner testified that he did not see how he could be in two meetings at the same time.

14. Petitioner testified that he believed that S.F. would have all the information about his temporary housing situation since she worked for the Department; he was under

the impression that workers in the Department shared information. Petitioner's assumption was incorrect.

15. On November 21, 2007, S.F. saw petitioner sitting in the Department's waiting room. S.F. did not ask petitioner why he was at the Department. S.F. contacted VAL by e-mail regarding petitioner's attendance and learned that petitioner had not attended the open center on November 19 and 20, 2007. Petitioner missed his November 21 appointment with S.F.

16. On November 21, 2007, S.F. drafted a Sanction Authorization that was approved the same day by a supervisor. The Sanction Authorization was based on petitioner not attending VAL open center and not meeting with S.F. on November 21, 2007. S.F. did not look into whether petitioner had good cause for missing these appointments before asking for a sanction.

17. Petitioner timely appealed the proposed sanction of \$150 per month.

18. Since petitioner received temporary housing assistance, he found a shared apartment for December 2007. This did not work out, and he found another apartment starting January 1, 2008. He pays \$500 of his \$580 monthly RUFA grant for rent. Between July 2007 and the start of

January 2008, petitioner and his daughter have lived in five homes.

ORDER

The Department's decision to sanction petitioner is reversed.

REASONS

The Reach Up program is predicated, in part, on helping families become self-sufficient. However, the focus on self-sufficiency does not exist in a vacuum. The Legislature set out the following purposes in 33 V.S.A. § 1102(a):

- (1) to assist families, recognizing individual and unique characteristics, to obtain the opportunities and skills necessary for self-sufficiency.
- (2) To encourage economic independence by removing barriers and disincentives to work and providing positive incentives to work.

. . .

- (6) To protect children by providing for their immediate basic needs, including food, housing and clothing.

. . .

See W.A.M. § 2200.

To ensure that the goals of the Reach Up program are met, Vermont uses a case management system designed to assess a recipient's abilities, identify barriers impeding an

recipient's ability to become self-sufficient, and provide help in the implementation of a family development plan (FDP). 33 V.S.A. § 1106, W.A.M. §§ 2340 (participation linked to the applicant's needs and abilities) and 2350. Further, 33 V.S.A. § 1102(b)(2) states that that a critical element to such a program includes:

Cooperative and realistic goal setting, coupled with individualized case management that addresses each individual's situations and barriers to self sufficiency.

Identifying barriers is particularly important. Barrier is defined in 33 V.S.A. § 1101(5) as follows:

"Barrier" means any physical, emotional, or mental condition, any lack of an educational, vocational, or other skill or ability, and any lack of transportation, child care, housing, medical assistance or other services or resources, domestic violence circumstances, caretaker responsibilities, or other conditions or circumstances that prevent an individual from engaging in employment or other work activity. (emphasis added)

W.A.M. § 2341(5).

The centrality of housing is addressed in 33 V.S.A. § 1106(6) in which homelessness prevention is listed as a required service and an individual's housing search may be counted as a "job readiness assistance activity".

In petitioner's case, his August 31, 2007 FDP addressed homelessness prevention by including housing search and delaying other job readiness programs because he faced loss

of housing when the campsite closed in a month's time. In fact, when S.F. took over as petitioner's case manager, she identified with petitioner a number of barriers that needed to be addressed including childcare and transportation. She did not do a full review of petitioner's history with the Department. If she had done a full case review, she would have discovered the past medical deferments based on psychological issues and gained a fuller history and understanding of petitioner.

More importantly, these same types of accommodations were not made when petitioner later became homeless at the end of October 2007 because his housing was condemned. The Department approved General Assistance temporary housing assistance on a periodic basis during November. Under the General Assistance program, petitioner had to come to the Department to make periodic applications and he was required to do a housing search. W.A.M. §§ 2602 and 2613.

S.F. had some knowledge that petitioner was homeless. Petitioner was told to do his housing search around his time commitments at VAL. One can understand the Department's frustration that petitioner's housing continued to be a problem; especially, since the Department made past accommodations for petitioner. However, it is important to

consider petitioner's housing dilemma in terms of the continuing lack of affordable housing for low-income Vermonters. There is a lack of rental housing, especially for low-income Vermonters. The 2007 update to Between a Rock and a Hard Place: Housing and Wages in Vermont reported that in 2006, Vermont had the tightest rental market nationally with a 3.6 percent vacancy rate and with a shortage of 21,000 affordable units. (Publication of Vermont Housing Council and Vermont Housing Awareness Campaign.)

There is a question whether the petitioner's barriers during November were adequately considered by the Department in terms of his RUFA obligations. Being homeless added a layer of complexity to petitioner's case and to the needs of his daughter for stable housing. The regulations allow for reconsideration of a recipient's barriers so that a FDP can be adjusted. See W.A.M. § 2361.3. However, this type of adjustment did not occur.

S.F. saw petitioner sitting in the Department waiting room on November 21, 2007. S.F. did not engage petitioner to find out why he was there. S.F. did contact VAL to check on petitioner's attendance. S.F. sought sanction authorization that day based on the November 5, 2007 FDP.

The regulations allow the Department to seek a sanction when a recipient has not complied with the terms of his/her FDP. Sanctions are an appropriate response if the recipient does not have good cause for noncompliance. 33 V.S.A. § 1112(a), W.A.M. § 2370.1. Good Cause is defined at W.A.M. § 2370.3 as:

Circumstances beyond the control of the participant may constitute good cause for an individual's noncompliance.

Examples of good cause are found at W.A.M. § 2370.32 and they range from inability to arrange transportation or childcare, requirement to appear in court, a family emergency, medical needs, to domestic violence.

Becoming homeless because housing is condemned for health reasons is a family emergency. Having to appear for periodic appointments for temporary housing assistance is akin to having to appear in court. Although the Department argued that petitioner should have come to the Department to apply after his hours at VAL, the Department's argument ignores that there are no set appointments for temporary housing assistance and that the petitioner could not take the chance of waiting, not being seen, and having a gap in his temporary housing assistance.

Under the regulations, the case manager has a responsibility to make a good cause determination. W.A.M. § 2370.2 states:

The case manager shall make a good-faith effort to contact the individual to discuss the act or pattern of noncompliance with the individual. The individual will provide sufficient documentation to substantiate a claim of good cause. . . . The case manager shall complete the good cause determination within ten days of becoming aware of the individual's noncompliance.

In this case, petitioner's case manager did not make this good faith effort to contact petitioner about his noncompliance or to give the petitioner the opportunity to document a good cause claim. By not doing so, the Department's decision to sanction petitioner is flawed.

RUFA is a remedial program, not a punitive program. Before imposing a sanction, it is important that the Department has fulfilled its obligations. As stated in Fair Hearing No. 12,720:

[i]n sanctioning those mandatory participants who do refuse to participate—an act that has severe consequences for that individual's entire family—the Department must comply with the strict letter of the regulations. In this case it did not do so.

See Fair Hearing No. 20,824.

When the Department failed to inquire whether the petitioner had good cause, the Department failed to "comply with the strict letter of the regulations".

It is important to note that good cause determinations can be made at other points in a recipient's case. For example, sanctions can be terminated at any point based upon a finding of good cause. W.A.M. § 2372. Petitioner's case gives the opportunity to make such a finding.

Petitioner's case is an example of missed opportunities in developing a cooperative and realistic plan to move petitioner towards self-sufficiency.

When petitioner became homeless in November 2007, his FDP should have been revisited. Steps should have occurred between Department personnel to coordinate petitioner's obligations between the temporary housing assistance requirements and the RUFA requirements included in the November 5, 2007 FDP. Petitioner assumed the different workers in the Department were in communication and that S.F. would know of his obligations to meet with eligibility workers for continued temporary housing assistance.

Based on the foregoing, the Department's decision to sanction petitioner is reversed and a finding of good cause for failure to cooperate should be entered. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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